EDITOR'S NOTE

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No. 85-1573

IN THE SUPREME COURT

OF

THE UNITED STATES

Supreme Court, U.S.
FILED
DEC 28 1985
JOSEPH F. SPANIOL, JR.
CLERK

Term, 1986

WILLIAM S. BRADFIELD, JR., APPELLANT

vs.

COMMONWEALTH OF PENNSYLVANIA

On Appeal from the Supreme Court of Pennsylvania

JURISDICTIONAL STATEMENT PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 15

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100-A

QUESTIONS PRESENTED

I. WHETHER APPELLANT WAS DENIED HIS RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE TRIAL COURT'S FAILURE TO PERMIT A CHANGE OF VENUE ON THE BASIS OF EXTENSIVE INFLAMMATORY AND PREJUDICIAL PRETRIAL PUBLICITY.

II. WHETHER THE APPELLANT WAS DENIED HIS RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE TRIAL COURT'S FAILURE TO GRANT APPELLANT'S REQUEST FOR A MISTRIAL FOLLOWING THE PROSECUTOR'S OPENING STATEMENT IN WHICH HE CHARGED APPELLANT WITH INVOLVEMENT IN ANOTHER CRIME, NAMELY, MURDER.

III. WHETHER THE APPELLANT WAS DENIED A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND DENIED THE PROTECTION AGAINST SELF-INCRIMINATION AS GUARANTEED BY THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE PROSECUTOR'S CLOSING ARGUMENT IN WHICH HE COMMENTED ON APPELLANT'S FAILURE TO TESTIFY ON HIS OWN BEHALF AND TO PRODUCE CERTAIN EVIDENCE ON HIS OWN BEHALF.

PARTIES INVOLVED IN THIS ACTION

APPELLANT: WILLIAM S. BRADFIELD, JR.

APPELLEE: COMMONWEALTH OF PENNSYLVANIA

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OPINIONS OF COURTS BELOW

The Opinion of the Court of Common Pleas, Delaware County, Pennsylvania is attached hereto as Exhibit A.

The Opinion of the Superior Court of Pennsylvania on the initial Appeal is attached hereto as Exhibit B.

The Opinion of the Superior Court of Pennsylvania upon application for Reargument is attached hereto as Exhibit C.

The Opinion of the Supreme Court of Pennsylvania is attached hereto as Exhibit D.

STATEMENT OF BASIS FOR JURISDICTION

A.

This is an Appeal by Writ of Certiorari from the decision of the Pennsylvania Supreme Court denying Appellant's request for a new trial on the charges of Theft by Deception and Theft by Failure to Make Required Disposition of Funds.

B.

The Order sought to be reviewed is dated September 30, 1985. The Notice of Appeal was filed in the Pennsylvania Supreme Court on December 27, 1985 pursuant to Rule 10 of the Supreme Court Rules of Civil Procedure, C. 28 U.S.C. §1257 (3).

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the United States Constitution:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

I. FACTUAL HISTORY

On June 25, 1979, Susan Reinert was found dead. Shortly thereafter, an Administrator Pendente Lite was appointed by the Register of Wills of Delaware County. On February 11, 1981, Appellant was arrested pursuant to an arrest warrant and was charged with Theft by Deception and Theft by Failure to Make Required Disposition of Funds and Conspiracy. The Affidavit of Probable Cause alleged that Appellant had unlawfully obtained the amount of $25,000 from Susan Reinert by convincing her that he would invest her monies on her behalf and that the Appellant has subsequently failed to make such investment or return the monies she had rendered either to her personally or to her Estate. A demurrer was subsequently granted in Appellant's favor with regard to the charge of Conspiracy.

The evidence at trial revealed that from 1978 to 1979, Susan Reinert made a series of withdrawals from several of her accounts totalling the sums of $24,500. During this time period, Susan Reinert allegedly communicated to various persons, including her brother, W. Patrick Gallagher, that she intended to make an investment with Appellant.

Testimony at trial further revealed that in April or May of 1979, a friend of Appellant's, Christopher Pappas, assisted Appellant in removing the sum total of $28,500 from Appellant's car.

On June 10, 1979, Appellant had an acquaintance, Wendy Zeigler, deposit the cash amount of $28,000 in a safety deposit box in a West Chester Bank. On June 22, 1979, these monies were removed from said safety deposit box. On June 25, 1979, Appellant accompanied by a friend, traveled to New Mexico for the purpose

of attending summer school. On June 26, 1979, Appellant asked Wendy Zeigler to deposit the cash sum of $300 in the safety deposit box located in the aforementioned bank in West Chester. This amount was subsequently deposited by Ms. Zeigler.

II. Procedural History

On February 11, 1981, Appellant, WILLIAM BRADFIELD, was arrested and charged with Theft by Deception and Theft by Failure to Make Required Disposition of Funds. A preliminary hearing was held on March 23, 1981. Appellant was subsequently arraigned before District Justice LaRosa on April 9, 1981. On June 29, 1981, Appellant's Motion to Suppress physical evidence and statements were heard before Judge Wright of the Court of Common Pleas of Delaware County. Immediately thereafter, the case proceeded to trial on July 28, 1981 before Judge

Wright and a jury. On August 3, 1981, the jury returned verdicts of guilty of Theft by Deception and Theft by Failure to Make Required Disposition of Funds. Post-verdict Motions were filed and denied by a three judge panel. On December 22, 1982, Appellant received a suspended sentence on the charge of Theft by Deception and received a sentence of four (4) months to two (2) years, a fine of $2,500 on the charge of Theft by Failure to Make Required Disposition of Funds and was ordered to pay restitution in the amount of $25,000 to the Estate of Susan Reinert.

Appellant appealed from the judgment of sentence of the Lower Court to the Superior Court of Pennsylvania. By Order of the Superior Court dated January 9, 1985, said Appeal was denied and the judgment of sentence of the Lower Court affirmed. Immediately thereafter, Appellant filed an Application for Reargument En Banc with the Superior Court. Said

Application for Reargument was denied by Order of the Superior Court dated March 13, 1985.

Appellant then appealed from this Order of the Superior Court to the Supreme Court of Pennsylvania, which denied Appellant's Request for Allowance of the Appeal on September 30, 1985.

III. Summary of Issues on Appeal

A. WHETHER APPELLANT WAS DENIED HIS RIGHT TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE TRIAL COURT'S FAILURE TO PERMIT A CHANGE OF VENUE ON THE BASIS OF EXTENSIVE INFLAMMATORY AND PREJUDICIAL PRETRIAL PUBLICITY

The Sixth Amendment of the United States Constitution guarantees that "the accused shall

enjoy the right to a speedy and public trial, by an impartial jury of the State . . . wherein the crime shall have been committed. It has been established that pretrial publicity in a criminal case may be so pervasive and prejudicial that the right to a fair trial implicitly provided for by the Sixth Amendment can be abridged and a new trial required. Federated Publications, Inc. v. Kurtz, 615 P.2d 440 (1980), Mayola v. Alabama, 623 F.2d 9992 (5th Cir. 1980); People v. Taylor, 462 NE 2d 478 (1984). The guarantees and protections of the Sixth Amendment are applicable to State prosecutions by virtue of the Due Process Claus of the Fourteenth Amendment. Duncan v. Louisiana, 391 US 145 (1968).

In the case of Commonwealth v. Daugherty, 493 Pa. 273, 426 A.2d 104 (1981) the Pennsylvania Supreme Court held that there may be instances where pretrial publicity is so pervasive and inflammatory and inherently

prejudicial as to require a change of venue. As stated in the case of Commonwealth v. Kivlin, 267, Pa. Super., 270, 406 A.2d 799 (1979):

> Pretrial publicity will be deemed so inherently prejudicial as to require a change of venue only if the articles appearing were either sensational, inflammatory and slanted toward conviction, rather than factual and objective; revealed the accused has a criminal record; referred to confessions, admissions or reenactments of the crime by the accused; or derived from reports from police and prosecuting officer. Even if one of these elements exists, a change of venue is required only if the publicity has been so extensive, sustained and pervasive, without sufficient time between publication and trial for the prejudice to dissipate, that 'the community must be deemed to have been saturated with it.' Daugherty, supra at 106 (citation omitted).

In cases wherein pretrial publicity has in effect denied the Defendant any chance of a fair trial, the Defendant need not demonstrate actual juror prejudice in order to be entitled to a change of venue. Commonwealth v. Daugherty, supra at 106; Commonwealth v. Rigler, 448 Pa. 441, 412 A.2d 346 (1980).

In the instant case, Appellant was denied a fair trial in contravention of the Sixth Amendment of the United States Constitution which guarantees to every accused the right to a speedy and public trial by an impartial jury. This case was the most widely publicized case of the decade in Pennsylvania. The inherently prejudicial pretrial publicity which attended the case was relentlessly unabating and prevasive from the time Susan Reinert was found dead in June of 1979 throughout the trial of the case. The news media disseminated sensational and inflammatory accounts alleging that Susan Reinert was murdered during a satanic cult ritual and during the making of a "snuff film" (a pornographic film in which a person is actually murdered). Moreover, news accounts repeatedly stated that Appellant was the prime suspect in the case and continually questioned his refusal to speak to authorities and the press. Clearly, articles and accounts such as these were slanted toward conviction and were devoid of factual objectivity. Even

local Delaware County newspapers carried front page coverage with satanic photographs of the Appellant. These papers were sold inside the Courthouse. A prime example of the effects of highly prejudicial pretrial publicity occurred when a large number of spectators, including the news media, cheered in the courtroom when the jury announced its verdict. In fact, the Court was shocked and outraged at this behavior and admonished the spectators. (N.T. 8/3/81 pp. 126, 127). When the array was selected, a large percentage of the original jury panel admitted being fully aware of the ramifications of the case. Literally dozens of news articles were submitted to the Court as Exhibits showing blatant and pointed cold blooded prejudice against Appellant.

In light of the inherently prejudicial nature of the pretrial publicity which attended the case at bar, the Court's denial of the Appellant's request for a change of venue was an

abuse of discretion. Appellant respectfully requests that this Court accept this case for review. The constitutional guarantee of a fair trial is fundamental to our system of justice. This Court must ensure that this sacred right is not weakened or abrogated in this or any case in which the media coverage is pervasive, inflammatory and slanted toward conviction.

B. **WHETHER THE APPELLANT WAS DENIED HIS RIGHTS TO A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE TRIAL COURT'S FAILURE TO GRANT APPELLANT'S REQUEST FOR A MISTRIAL FOLLOWING THE PROSECUTOR'S OPENING STATEMENT IN WHICH HE CHARGED APPELLANT WITH INVOLVEMENT IN ANOTHER CRIME, NAMELY, MURDER**

It is well settled that in the Opening Statement, the prosecution may not make statements where the unavoidable effect of such statements would be to prejudice the jury, forming their

minds a fixed bias and hostility toward the Defendant, rendering them incapable of weighing the evidence objectively and rendering a true verdict. Commonwealth v. Beasley, ____ Pa. ____, 475 A.2d 730 (1984); Commonwealth v. Stevens, 276 Pa. Super. 428, 419 A.2d 533, 534 (1980). Mcreover, it is established beyond argument that a reference, either expressly or by reasonable implication, by the prosecutor to the jury indicating that the accused has been engaged in prior criminal activity, denies the accused a fair trial and requires a new trial. Commonwealth v. Percell, 499 Pa. 589, 454 A.2d 542 (1982); Commonwealth v. Washington, 488 Pa. 133, 411 A.2d 490, 492 (1979).

In the case at bar, the net effect of the Prosecutor's comments during his Opening Statement was to accuse the Appellant of preknowledge of the murder of Susan Reinert and to implicate him in that crime. In his Opening

Statement, the Prosecutor stated:

"He puts a thousand dollars in his own pocket and gives her the rest. And, he takes her then, he drives her then to the Southeast National Bank in West Chester, where he instructs her to remove the envelopes from the safe deposit box and to hold onto that money and the rest that he had given her, in case something happens to Susan Reinert that weekend, he didn't want, he wanted the money available to him. He was afraid that his money or the money in that box would be frozen. That is the reason he gives her for going into the box, taking the money out and giving her the rest of the money he had in his possession." (N.T. July 28, 29, 1981, pp. 162-163).

" . . . the following Monday, it is discovered that Susan Reinert has been found dead in Harrisburg. That is June 25. Excuse me, it is the same day, June 25, that day.

The following day, Monday, Tuesday, June 26, Wendy calls. She calls Mr. Bradfield in New Mexico to tell him about Susan Reinert having been found dead.

And, he says, I already know about it. I heard about it. Somebody else called me, some other teacher from school called me about it.

What I want you to do is take $300 of the money from the safety deposit box and put it back in so it won't look suspicious." (N.T. July 28, 29, 1981, p. 165)

The fact of Susan Reinert's death was neither logically nor legally relevant to any issue in the case at bar. Judge Wright

implicitly acknowledged this fact by chiding the Prosecutor at sentencing, suggesting the impropriety of the Prosecutor's remarks.[1] These remarks, in conjunction with the excessive and prejudicial pretrial publicity which connected Appellant with the death of Susan Reinert, had the unavoidable effect of prejudicing the jury as to render them incapable of an objective verdict.

Appellant respectfully requests this Court to grant a new trial in order to rectify the admission into evidence of the aforementioned prejudicial remarks made by the Prosecutor during his Opening Statement.

---

1 "And at the trial, one of the things that may - and I think one of the stronger points - if [the Defendant] is successful with regard to . . . an appeal, may be the allusion to the death of Susan Reinert and the disappearance of her children, that did get into the trial. I did my best to keep it out". (N.T. Dec. 22, 1982, p. at 20).

C. WHETHER THE APPELLANT WAS DENIED A FAIR TRIAL GUARANTEED BY THE SIXTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND DENIED THE PROTECTION AGAINST SELF-INCRIMINATION AS GUARANTEED BY THE FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION AS A RESULT OF THE PROSECUTOR'S CLOSING ARGUMENT IN WHICH HE COMMENTED ON APPELLANT'S FAILURE TO TESTIFY ON HIS OWN BEHALF AND TO PRODUCE CERTAIN EVIDENCE ON HIS OWN BEHALF

This Court has consistently held that an accused's Fifth Amendment Constitutional privilege against self-incrimination is violated when the Prosecutor in his summation to the jury makes reference to the accused's silence at trial in order to infer the guilt of the Defendant and that such comment is reversible error. Griffin v. California, 381 U.S. 609 (1965); Tahan v. United States, 382 U.S. 406 (1966); Commonwealth v. Easley, 483 Pa. 337, 396 A.2d 1198 (1979).

In the case at bar, the Prosecutor repeatedly referred to Appellant's silence at trial by stating that "nobody testified" and that "no one said". The Prosecutor also commented upon Appellant's failure to produce witnesses to testify as to certain occurrences:

"No one brought a sailboat into the room. So apparently he didn't go buy a sailboat. We know that. We didn't even see a picture of it and by the way, nobody testified in court that the money . . . the trunk money, safe deposit box money, the money that he had Wendy Zeigler take out of the box and then put back, nobody testified in court that that was his sailboat fund, whatsoever. Nobody testified to that. The Defendant has no burden to prove anything in this case. The Judge will tell you that. It's absolutely true he doesn't have to prove anything. However, when he does present witnesses and cross examine witnesses . . .

But nobody said that that money, the money from the safe deposit box, was that sailboat fund, be it if there was a sailboat fund. Nobody tried to connect that money to that sailboat . . . No one said that's the money. No one even said the money the mother had given him in 1974 was the same money . . . but ten thousand dollars way back in '74 nobody said nobody even attempted to connect those monies to the two of them. And nobody ever said the Defendant had any sums of cash prior to the period we are talking about in 1979, early '79." (N.T. August 3, 1981, pp. 54, 55).

The Prosecution subsequently made a feeble attempt to rectify this error by telling the jury that Appellant did not have to prove anything. The latter comment was only effective in emphasizing Appellant's choice to remain silent. This is particularly true since the Prosecution continued to repeatedly comment that "nobody testified". (N.T. August 3, 1981, pp. 54, 55).

On the basis of the impropriety of the Prosecutor's remarks and their inherenlty prejudicial effect upon the jury, the Appellant requested the lower court to grant a mistrial. The Appellant now respectfully submits that his conviction must be reversed and a new trial granted and petitions this Honorable Court for said relief.

STATEMENT OF REASONS FOR PLENARY CONSIDERATION

This case involves the prosecution of the Appellant for Theft by Deception and Theft by Failure to Make Required Disposition of Funds. Although these are certainly serious charges, they are not the sort which normally provoke a great deal of media attention. However, this case was and continues to be one of the most celebrated and widely publicized Pennsylvania cases in the last decade.

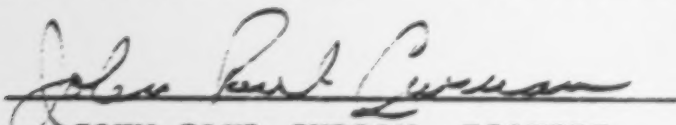
The reason for this is that the alleged victim of the theft was one Susan Reinert, who, prior to this prosecution, was found dead in a Harrisburg parking lot as the result of a brutal murder. As an acquaintance of Ms. Reinert, and as a fellow school teacher, the Appellant became the victim of numerous inflammatory articles in the media describing him as the perpetrator of the murder. This theme was introduced into the trial by the prosecution, as described above.

The net result was that this trial was in effect a trial for the murder of Susan Reinert, rather than a trial on the merits of the actual charges presented. The entire community from whom the jury was selected had been inundated with media accounts of this horrible murder which incriminated the Appellant. The overwhelming media coverage of this event unrelated to the charges involved in the instant case, coupled with the prosecutor's misconduct, created an implicit unfair prejudice in the hearts and minds of the jury. This situation is repugnant to the concept of a fair trial which is embodied in the Sixth Amendment of the United States Constitution.

This case deserves this Honorable Court's special attention so that in the interest of substantial justice, the Appellant may be afforded a new trial, a trial in which Appellant's fundamental constitutional rights will be adequately protected.

Respectfully submitted,

CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: 

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MMONWEALTH OF PENNSYLVANIA

vs.

LLIAM S. BRADFIELD, JR.,

Appellant

IN THE SUPREME COURT OF PENNSYLVANIA

No. 55 Philadelphia 1983

PROOF OF SERVICE

JOHN PAUL CURRAN, ESQUIRE, Attorney for Appellant, William Bradfield, Jr., hereby certifies that he did mail a true and rrect copy of the Jurisdictional Statement in the above-captioned tter to John Reilly, Esquire, District Attorney of Delaware unty Courthouse, Media, PA 19063 by regular mail on March 18, 1986.

CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: _____

JOHN PAUL CURRAN, ESQUIRE

IN THE SUPREME COURT

OF

THE UNITED STATES

COMMONWEALTH OF PENNSYLVANIA

vs.

WILLIAM S. BRADFIELD, JR., APPELLANT

No.

Term, 1985

APPENDIX TO JURISDICTIONAL STATEMENT

CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: JOHN PAUL CURRAN, ESQUIRE
Attorney for Appellant,
William S. Bradfield, Jr.

EXHIBIT "A"

THE COURT OF COMMON PLEAS OF DELAWARE COUNTY, NNSYLVANIA

CRIMINAL

MMONWEALTH OF PENNSYLVANIA :

. : NO. 922 A-C of 198

LLIAM S. Bradfield, JR. :

ward J. Weiss and Dennis G. McAndrews, Assistants District Attorney, for the Commonwealth
hn Paul Curran, Esquire and Charles A. Fitzpatrick, III, Esquire, Attorneys for the Defendant

O P I N I O N

IGHT, J. DATED: February 8, 1983

The Defendant was found guilty after a jury ial of Theft By Deception, Information No. 922- of 1981 and Theft By Failure to Make Required sposition of Funds Received, Information No. 2-B of 1981.

Defendant timely filed Post-trial Motions ging that judgment be arrested or a new trial be anted and he assigned in his Motions twenty-two asons why his Motions should be granted. The ief submitted by the Defendant and the issues

rgued orally relied upon the following ten reas-
ns:

1. The Court of Common Pleas of Delaware
ounty lacked jurisdiction to try the Defendant on
he charge of Theft by Deception;

2. The evidence produced at trial was
nsufficient to sustain a verdict of guilty;

3. The Court erred in admitting into
vidence Exhibit C-1 through C-9, and in per-
itting the District Attorney to inform the jury of
is interpretations of the notations made on these
chibits in his closing argument, when there was no
stimony or evidence to support said interpreta-
ions;

4. The Court erred in permitting W. Pat-
ick Gallagher, Patricia Schnure and James McMul-
n to testify in regard to conversations which
ey had with the decedent, Susan Reinert;

5. The Court erred in failing to grant the
otion for Change of Venue;

6. The Court erred in failing to grant the uest for a mistrial following the District orney's comment during his opening statement;

7. The District Attorney committed re- sible error in his closing argument by comm- ing on the Defendant's failure to testify and sent certain evidence and otherwise argued facts in evidence;

8. The District Attorney committed re- sible error in commenting to the jury in his ning statement about the meaning of certain ations on Exhibit C-6;

9. The Court erred in permitting Steven er to testify regarding financial transactions Susan Reinert and financial transactions of the endant;

10. Trial Court erred in its charge to the jury stating as a part of the definition of Theft By lure to Make Required Disposition of Funds ceived that the jury need not be able to iden-

y the funds themselves.

Issues not briefed are thus waived. Common-lth v. Knox, 290 Pa. Super. 104, 434 A.2d 151 81).

I

On June 25, 1979, Susan Reinert was found d and an Administrator Pendente Lite was ap-nted by the Register of Wills of Delaware County. lowing investigation by the Pennsylvania State ice, Sergeant Joseph A. VanNort, executed an idavit of Probable Cause for the arrest of liam S. Bradfield, Jr., for the crimes of which stands convicted and the additional crime of spiracy. Said Affidavit alleged, and the Common-lth did prove at the trial, that William S. dfield, Jr., by agreement with Susan G. Reinert, ertook to make an investment on behalf of Susan nert, which obligated William S. Bradfield, Jr. invest the sum of $25,000.00 for Susan G. nert. When William S. Bradfield, Jr. was called

o account for said sum of money by the Orphan's ourt Division of the Court of Common Pleas of elaware County on June 10, 1980, William S. Brad- ield, Jr. in response to questions addressed to im denied that Susan G. Reinert ever gave him any oney to invest and further denied that Susan G. einert gave him any money at any time after ebruary 21, 1979, for the purpose of investment or therwise.

The testimony of William S. Bradfield, Jr. t the Orphan's Court hearing was read to the jury n the criminal trial by stipulation of the part- es.

The commonwealth further established that usan G. Reinert had inherited in excess of 0,000.00 from the Estate of her mother, Jane llagher, and had deposited these funds in a ntinental Bank Statement Savings Account.

Shortly after said funds were deposited o her account, Susan G. Reinert on January 26,

79, contacted her brother, William Patrick Gal-
gher and invited him to participate in an in-
stment with her and the Defendant. Mrs. Reinert
dicated to her brother that the investment would
made by an unnamed Bach and Co. agent, whom
dfield had obtained and that he would guarantee
rate of return in excess of 12%. Mrs. Reinert
ated that she wuld be contributing $25,000.00
the Defendant would himself invest $12,000.00
that she proposed her brother to invest an
ditional $13,000.00 to create a total investment
d of $50,000.00. Susan Reinert did not name the
ent nor did she specify a term or form for the
vestment in her discussions with her brother.
lliam Patrick Gallagher declined to enter the
nsaction and so advised his sister.

During this same period of time, from the
te fall of 1978 to the early Spring of 1979,
san Reinert made a similar statement of her
tent to invest with Defendant to her close friend,

tricia Schnure. She told Patricia Schnure and
tricia Schnure testified that Mrs. Reinert
ated that she intended to buy a high yield
tificate with the Defendant in order to sec-
the education of her children. She further
ated that her share in this arrangement was
ing to be $25,000.00, a sum which would be
tched by the Defendant. Mrs. Reinert also
formed Patricia Schnure that she intended to
rry the Defendant in the summer of 1979 in
gland.

The testimony at trial indicated that
e records of Bach and Co. revealed that the
mpany did not make any investment in either or
th the name of the Defendant or of Susan
inert for a period of seven years prior to the
ial, thus clearly including the period of
79. The testimony of the Bach and Co. repre-
ntative further indicated that as of January,
79, Bach rarely issued certificates of deposit

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general customers and then only in the amount $100,000.00 and up and at the prevailing erest rate, then of 10.51%.

The testimony of the branch manager of Continental Bank in King of Prussia, James P. ullen, showed that on February 14, 1979, an Reinert went to said branch and asked to hdraw $25,000.00 in cash and told James P. ullen that she, "had to have cash" for "an estment". When Mr. McMullen hesitated, Mrs. nert said, "it is my money" and when she tinued to insist on cash Mr. McMullen asked to step into his office, wherein he asked an Reinert whether any other form of transfer ld be accepted and Mrs. Reinert responded t she "had to have cash". Following said versation, Susan Reinert withdrew $1,500.00 cash.

On February 20 or 21, 1979, Susan Rein- again appeared at the Continental Bank, King

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Prussia Branch and withdrew an additional 500.00 in cash and $10,000.00 in the form of treasurer's check, made payable to herself. also made a telephone transfer of $500.00 m her Continental Statement Savings Account her Continental Checking Account.

After leaving the Continental Bank, Susan nert opened an account at the King of Prussia ice of the American Bank and deposited her ,000.00 treasurer's check into said account.

On March 2, 1979, Susan Reinert returned the Continental Bank and withdrew the remain- $5,000.00 from her Statement Savings Account the form of a treasurer's check payable to self and deposited said $5,000.00 check in new checking account at the American Bank. On ch 7, 1979, Susan Reinert withdrew the $5,000.00 cash from the Continental Bank Statement ings Account.

On March 13, 1979, Susan Reinert ap-

ared at the American Bank in King of Prussia
d cashed a check for $10,000.00 against her new
ecking account and on April 11, 1979 she again
shed a check a this bank against that account
r $5,000.00. This last transaction brought to
e sum of $24,500.00 the total amount of cash
tained by Susan Reinert via her Continental
nk Statement Savings Account between February
, 1979 and April 11, 1979 and the telephone
ansfer of $500.00 on February 21, 1979, brought
e total funds removed from that account to
5,000.00.

The movement of these funds was shown on
e personal savings account of Susan Reinert
th the notations, "Cash to Bill, Cash to B, B
sh and INV, as shown by the Commonwealth's
hibit C-1 through C-5.

Chris Pappas testified that in April or
y of 1979 he, a former student at Upper Merion
gh School and on the wrestling team coached by

he Defendant, was with the Defendant when he leaned out his attic. On that day the Defendant old Chris Pappas that he had a large sum of money n his car and when Chris Pappas responded that t seemed awkward to have "that much money" in he's automobile, both individuals then went ownstairs to Defendant's red Cadillac. Pappas nd Bradfield then retrieved huge amounts of ash from throughout the Cadillac, from brief-ases, from a gym bag, and within the passenger rea and from enveloped within the trunk. The oney recovered was then counted in the apart-ent of the Defendant and this total amount in 50.00 and $100.00 denominations equalled 2,850.00. The denominations of these bills was ignificant because the testimony of the tellers t the Continental Bank and the American Bank ndicated that the cash withdrawn from those anks was in $50.00 and $100.00 denominations.

Pappas testified further that when the oney was counted, the Defendant stated to him hat he had withdrawn the cash from his savings ccount at an Elverson Bank and that when he had ttempted to withdraw all the cash at once, bank fficials had "given him a hard time about it". radfield told Pappas that he had "explained hat it was his own money" but the bank was reluctant to, let that large sum, go all at nce". Bradfield then told Pappas that the bank ould only permit him to remove his cash in ncrements of $5,000.00 or $6,000.00 and that he ad preceded in that manner.

Pappas further testified that at that ime Defendant also stated he was "worried" bout having that amount of money and indicated or his safety and Pappas' safety that they hould remove their fingerprints from the bills. ith that, Defendant took out his pocket hand-

rchief and wiped off the bills in the presence
Pappas. After doing so, the Defendant placed
e bills in three envelopes and put them into a
ling cabinet in his apartment and then locked
e cabinet.

Susan Meyers testified at trial that from 1973 o 1980 she was the live-in girlfriend of the efendant and sometime during this Spring of 1979 she aw stacks of bills in the rear of the cabinet. Susan eyers further testified that she did not touch or isturb the stack of bills, but did observe that they ppeared new or uncirculated and that the top bill as a $100.00 bill. Susan Meyers testified that hortly thereafter, on her birthday (May 25, 1979) he Defendant gave her five new $100.00 bills. Susan eyers further testified that she had noticed that he cash in the file cabinet had been removed prior o her May 25, 1979 birthday.

The testimony of Chris Pappas further indicated hat a week to 10 days after the Defendant placed the oney in the cabinet he told Pappas that he was orried about having the money in his apartment and sked Pappas to take possession of the money which he greed to do. The Defendant then gave him the three nvelopes and Pappas hid the money in his bedroom at is residence for about seven to ten days. Pappas estified that during that period of time, Bradfield

nd Pappas discussed alternative locations in hwich
o store the cash. As a result of these discussions,
radfield decided that Pappas should open a Safe
eposit Box "in a bank not too close to (Pappas')
ome", and place the money therein. Bradfield told
ppas that this procedure was necessary to conceal
he money because he was worried that "for various
easons . . . the police might come to his home" or
o Pappas' home in the "course of an investigation".
ppas testified that Bradfield explained that if
he investigation included a search of financial
ecords to locate certain monies, the records of a
ank located far from the homes of he and Pappas would
e less likely to be examined. Pappas testified that
e followed Bradfield's instructions and opened a
afe Deposit Box on June 4, 1979 at the Southeast
ational Bank in West Chester. Upon arriving at the
ank in West Chester, Pappas paid the $10.00 rental
ee and obtained two keys and two deputy cards for the
ox. He entered the vault with the three envelopes
f cash, which he had received from the Defendant,
nd placed these envelopes in the box as instructed.

wever, prior to leaving the vault, Pappas removed
,300.00 from these envelopes with the permission
the Defendant in order to buy himself an
tomobile.

Wendy Zeigler testified that Jenny Power
livered to her one of the deputy cards while she was
tending college in California. Wendy Zeigler
stified further that she was a former student of
e Defendant and had dated him since her graduation
om high school in 1978. Jenny Power was a classmate
Wendy Zeigler and the two were close friends in
gh school. Wendy Zeigler testified that when she
ceived the card from Jenny Power, she signed it and
ve it to Chris Pappas upon her return from college
June 19 or 20, 1979.

Dianna Weaver testified that she was the
sistant Branch Manager of the Southeast National
nk and as custodian of the records of the West
ester Office, she produced records pertaining to
e Safe Deposit Box, opened by Chris Pappas and
ese records established dates of entry into the box
whom and even the time of entry.

Chris Pappas testified that on June 22, 1979, he returned to the Southeast National Bank in West Chester with the deputy card signed by Wendy Zeigler and Bradfield and gave these cards to the bank officer. Pappas testified he then entered the safe deposit box and removed $1,200.00 from the box for Bradfield at Bradfield's request. Pappas testified this money was used in part to purchase a $400.00 plane ticket for Bradfield to fly to New Mexico where he and Pappas were to attend summer school and the remaining $800 was for spending money for Bradfield at school.

Pappas then drove to the Defendant's apartment to give him the $800.00 and he used the remaining $400.00 to purchase a plane ticket. When Bradfield did not meet him at the apartment he left the $800.00 in an envelope in the apartment. While returning to his house, Pappas crossed paths with Bradfield at Valley Forge Park and both individuals pulled their cars over. Pappas told Bradfield that he had left the money in an envelope and Bradfield stated that he "would go back to the apartment right away and get it".

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Wendy Zeigler in her testimony stated that she had arranged to meet Bradfield at 3:30 p.m. on this same day and Bradfield showed her an envelope containing four or five thousand dollars in cash. The two individuals counted the money and Bradfield removed $1,000.00 for his own expenses and gave Wendy Zeigler the rest of the cash. The two then proceeded, according to the testimony of Wendy Zeigler, to the Southeast National Bank in West Chester to Bradfield's car. At the bank, Bradfield gave Wendy Zeigler a key and at Bradfield's instructions, Wendy Zeigler removed the envelopes of cash from the box, placed them in her handbag and returned to the car where Bradfield was waiting. Bradfield then drover Wendy Zeigler to Jenny Power's house where Wendy Zeigler was dropped off with the money. Jenny Power then drove Wendy Zeigler home.

Zeigler testified that when she arrived home she went to her bedroom and counted the money which she had obtained from the Defendant and from the safe deposit box. It was her recollection these monies

totalled about $28,000.00. She further testified that she separated the cash by denominations, placed them in separate envelopes and put these envelopes in a closet in her room. That same evening, Pappas according to his testimony, purchased a plane ticket for Bradfield in New Mexico.

That weekend the Defendant together with Susan Meyers, Vince Valaitis and Chris Pappas went to the seashore. They returned June 25, 1979. That evening Wendy Zeigler and Power drove Pappas to the airport for his flight to New Mexico with the Defendant. Pappas was met at the airport by the Defendant and the two flew together to New Mexico for summer school as planned.

Wendy Zeigler testified that on Tuesday, June 26, 1979 she called the Defendant in New Mexico by telephone and informed him that Susan Reinert had died. When Zeigler told Bradfield this, he indicated that he was already aware of Reinert's death and that another teacher from Upper Merion had told him of this fact. Bradfield instructed Zeigler

to take $300.00 of the money she was holding, place it in an envelope and replace it in the West Chester Safe Deposit Box. Bradfield explained that "he was afraid that an empty safe deposit box might look suspicious." He did not indicate to Zeigler why the empty safe deposit box which he shared with two other people unrelated to Susan Reinert might raise suspisions.

Shortly after this telephone conversation, from Wendy Zeigler, Bradfield told Pappas of the previous few days dealings with Zeigler and Pappas testified, that Bradfield had told him that he had told her - (1) to remove the money from the safe deposit box; (2) remove the fingerprints from the money; and (3) put $300.00 back into the box in order to justify its existence in the event that the box was discovered. Bradfield further explained that Zeigler had the rest of the money and he was "worried about the money being discovered". He further stated that this was the reason that "he wanted to move it around to different people".

On June 26, 1979, the Pennsylvania State Police secured the Haverford Township residence of the decedent, Susan Reinert and obtained her personal bank records. These records were introduced as Exhibit C-1 through C-5, C-7 and C-8.

Continuing the chronology of events as established by the testimony of the witnesses and the entries on the access card to the Safe Deposit Box it appears that on June 27, 1979, Wendy Zeigler again entered the box.

Zeigler, in compliance with the instructions of Bradfield, placed $300.00 of the previously removed money in the box.

Zeigler testified that later that summer, 1979, Bradfield instructed her to send his former wife, Muriel Bradfield, money for her phone bill. Zeigler removed the money from the cash which she had taken from the West Chester safe deposit box and still held in her bedroom closet. Zeigler mailed two new $100.00 bills from this cash in an envelope, with only the address of Muriel Bradfield thereon, to her

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from King of Prussia. Muriel Bradfield testified that she received this envelope and its contents through the mail. Chris Pappas further testified that on August 16, 1979, the summer school session ended and he went to Denver, Colorado to visit a friend.

On August 19, 1979, a further State Police inspection of the Reinert residence produced an additional copy of the telephone transfer advisory for the $500.00 February 21, 1979 transfer of funds from Reinert's savings to her checking account at the Continental Bank. Chris Pappas testified that he returned hom from Colorado during the first week of September and when he arrived home the Defendant gave him two $100.00 bills as compensation for the damage which Bradfield had done to Pappas' automobile in a collision. Pappas took the cash, placed the money in a book and forgot about it for a period of time. When he was interviewed by the State Police he gave them these bills. The stipulated testimony of James Duffy of the Federal Reserve Bank was to the effect that

hese bills were placed at a Philadelphia area bank y the Federal Reserve on September 15, 1978.

Wendy Zeigler testified that in early September, 979, she returned the envelopes containing the cash hat she had been holding to the Defendant. She estified that this transaction took place in appas' home and after that day she said she never saw ny of the money again, nor did she ever again see the efendant with large amounts of cash.

Thereafter, but before September 15, 1979, Chris appas and John Pappas testified that Bradfield came o their home and discussed with them the money and he possibility of arrest. The Defendant told them that an investigation was now in progress and that he was worried that Bradfield and Chris Pappas may be arrested. Bradfield further told them that a "fund was being provided" for them but he, Bradfield, was worried about his attorney knowing that a large sum was available. Therefore, according to the testimony of Pappas the Defendant asked Chris Pappas if he and his father and brother would (1) accept the money, (2) convert the cash to money orders, (3) make

the money orders payable to Bradfield, (4) state if asked, that the money was the Pappas' and it was being provided for the benefit of the Defendant and Chris Pappas in the event that the arrests were made.

The testimony given at trial by George Pappas and John Pappas conflicted as to the amount of cash turned over by Bradfield to them. However, the amount in question is not critical to the issue in this case, as the Pappas' testimony made clear that at least $5,000.00 and probably more of this large sum of money was laundered by Bradfield in an attempt to conceal his possession and uses thereof. The money transferred to George Pappas was in new $100.00 bills.

George Pappas testified that on September 17, 1979, he took $3,000.00 of this cash and obtained three bank checks payable to Bradfield. George Pappas then gave John Pappas $2,000.00 and John Pappas on September 19, 1979, at the Girard Bank in Whitehall, Lehigh County, Pennsylvania, likewise obtained bank checks. Chris Pappas testified that on September 17, 18 and 20, 1979, he also took portions

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of the cash turned over by the Defendant and purchased three similar money orders pursuant to the request of Bradfield. These money orders were made payable to William Bradfield.

After all these money orders were purchased, Chris Pappas took possession of them and together with the Defendant, Bradfield, went to the law office of John Curran in Philadelphia. At that time Bradfield signed over the bank checks to Curran, apparently as a retainer for his representation of the Defendant. There is no suggestion, evidence or otherwise, that Curran knew the source of these funds.

Finally, Chris Pappas testified that on February 22, 1980, he returned to the Safe Deposit Box in West Chester, removed the remaining $300.00 from the box and closed the box and retrieved the deputy cards and destroyed them.

The Commonwealth also established at trial certain facts concerning the financial status of the Defendant, which facts excluded other sources as an explanation for his possession of huge sums of cash.

This evidence was established by an extensive review of all bank records connected to the Defendant and showed that from 1973 to 1980, the Defendant signed everyone of his pay checks over to Susan Meyers, who would deposit the entire sum into one of their two joint bank accounts. Susan Meyers paid all bills from the checkbook and Bradfield received all of his spending money during this period from Susan Meyers. Evidence further established the monies received by Bradfield in 1977 sale of his real estate and the mortgaging of his second Chester County property, were used exclusively for the establishment and continuing operation of an art business in the Montgomery Mall in North Wales. Further testimony established this business made absolutely no profits and that Bradfield received no monies from said business prior to its sale in July, 1980. The testimony of Susan Meyers further established that Bradfield had no other additional sources of income and was never seen with large sums of money by her during their lengthly relationship, which preceeded the crime in question and overlapped the concealment and laundering activities of the Defendant.

The records produced by the Commonwealth included the banking records of the Defendant at Elverson National Bank in Elverson, Pennyslvania.

II

Defendant first asserts that the Court of Common Pleas of Delaware County lacked jurisdiction to try him for the crime of Theft by Deception. In making this assertion, the Defendant does not contend that Delaware County lacked jurisdiction to try him on the charge of Theft by Failure to Make Required Disposition of Funds. Such an argument undoubtedly was not advanced given the continued validity of Commonwealth v. Sexton, 107 Pa. Super. 69, 162 A.2d 678 (1932), cited with approval in Commonwealth v. Vertels, 260 Pa. Super. 496, 394 A.2d 1036 (1978), affirm, 491 Pa. 187, 420 A.2d 404 (1980). In making the argument that this Court lacks jurisdiction, Defendant fails to recognize the impact of 18 P.S. §3902 which establishes the consolidation of all theft offenses.

Sexton together with the enactment of §3902, mandates a finding that the Delaware County Courts had jurisdiction over both charges.

The validity of the Sexton principle was reiterated by the Superior Court in Commonwealth v. Bertels, supra, where the Court stated that, "a charge of embezzlement or fraudulent conversion may be tried in any County in which any part of the embezzlement of fraudulent conversion was committed, or where, upon being called to account, the Defendant disowned having received the money Commonwealth v. Sexton, 107 Pa. Super. 69, 162 A.2d 678 (1932)." Defendant cites no authority to explain why a Court which has jurisdiction over one theft crime as he acknowledges by his silence in his brief, would not under §3902 have the jurisdictional authority to try the Defendant upon any other theft charge. There have been no reported decisions interpreting §3902 in the jurisdictional context. The comments of the Model Penal Code, state that "the purpose of consolidation is to prevent procedural difficulties resulting from the fact that the boundaries between

the traditional offenses are obscure and from the rule that a Defendant who is charged with one offense cannot be convicted by proving another." Toll, Pennsylvania Crimes Code Annotated, §3902 at 420 (1974), reprinting the comment of the Joint State Government Commission (1967). This comment just as logically supports the argument that all theft offenses should be tried in the same jurisdiction even though the Defendant in committing his crimes committed them as here in several different counties including Montgomery, Chester and Delaware County.

To hold otherwise would be to defeat the drafters intent to remove all artificial distinctions between different forms of theft and allow a defendant to so structure his criminal activities so that different parts thereof occur in different counties and thereby reduce the ability of prosecuting attorneys and investigating officers to bring guilty parties to justice.

III

In his second assignment of error, Defendant contends that the evidence produced at trial was insufficient to sustain the guilty verdicts rendered by the jury.

In his argument regarding the sufficiency of the evidence, Defendant first asserts that the Commonwealth's evidence was lacking on the charge of Theft by Deception in that (1) the evidence did not show that the Defendant actually received the funds in question, and (2) the testimony did not establish any misrepresentation made by the Defendant to induce action on the part of Susan Reinert.

In his Brief, the Defendant concedes, that a conviction on either charge may be established on the basis of circumstantial evidence along, Commonwealth v. Berrios, 495, Pa. 444, 434 A.2d 1173, (1981), Commonwealth v. Joyner, 489 Pa. 502, 414 A.2d 1003 (1980). The evidence of the Commonwealth although circumstantial in nature, was also clearly more than substantial enough to establish the guilt of the

Defendant of the crimes charged. The circumstantial evidence of the Commonwealth was not unlike the web of a spider that catches its prey. Experience shows that positive proof of fraudulent acts is not generally to be expected, and for that reason, among others, the law allows a resort to circumstances, as a means of ascertaining the truth. Circumstantial evidence is often as convincing as direct testimony and often more so. The record on appeal must be viewed in light most favorable to the Commonwealth as verdict winner, and the reviewing Court must "accept as true all evidence and all reasonable inferences therefrom upon which, if believed, the fact finder could properly have based its verdict." Commonwealth v. Davis, 491 Pa. 363, 421 A.2d 179 (1980). (Citations Omitted).

The evidence established that, Susan Reinert, inherited a large sum of money in late 1978. Shortly thereafter, she discussed investing the money with her brother and made similar declarations of intent to a close friend. Thereafter, Mrs. Reinert

attempted to withdraw $25,000.00 in cash from a bank and when the bank refused to give her this amount in cash, she, by a series of withdrawals and transfer, was able to obtain that amount of money by April 11, 1979, a short period of time after she began. She had indicated to her brother and the friend that Bradfield was going to invest the money for her.

It was at this approximate time that the Defendant was seen by Chris Pappas with approximately $28,500.00 in cash, in his possession. The evidence of the Commonwealth established that even his closest friends have never seen Bradfield with such large sums of cash previously. The Defendant explained to Chris Pappas, and Chris Pappas so testified that he had withdrawn the cash from his savings account at an Elverson Bank, and his explanation sounded remarkably like the procedure taken by Susan Reinert. Her Elverson Bank statements do not support the statement Bradfield made to Chris Pappas. During the next two months, the Defendant engaged in a series of activities regarding the money which involved Chris Pappas, Wendy Zeigler, a safe

deposit box in West Chester, the use of deputy cards, the use of money orders, all in an effort, to avoid having the money discovered. Bradfield said he was "worried about the money being discovered."

This circumstantial web of facts, of times, places, amounts, intentions and actions together with the laundering activities of the Defendant in order to avoid detection of the non-existence of alternative sources of monies to Bradfield, make clear that the Defendant received the monies of Susan Reinert by creating a misimpression that he would invest these monies for her.

The cases cited by the Defendant regarding the dual issues of his actual receipt of the money, and the misrepresentation made to obtain same are not applicable. For example, in Commonwealth v. Daubner, 288 Pa. Super 47, 431 A.2d 280 (1981), there was absolutely no evidence that the Defendant had actually received money as a result of his clear misrepresentation. In contrast, there is abundant evidence in the case at bar that the Defendant, without explanation, was in possession of huge amounts of cash in the same amount as, and at the same time of Susan Reinert's withdrawal of cash from her savings account.

Furthermore, the Defendant also cites the case of Commonwealth v. Gallo, 473 Pa. 186, 373 A.2d 1109 (1977). Gallo dealt with a transaction between two businessmen in which the only evidence of the Defendant's intent to deceive was his failure to subsequently perform his contractural obligation. By contrast, in the case at bar, the evidence clearly showed that Bradfield not only failed to invest the funds as promised, but also engaged in extensive laundering of money. The fact finder may of course, consider all of the attendant circumstances from which the intent to defraud may be inferred. Commonwealth v. Posavek, 278 Pa. Super. 265, 420 A.2d 532 (1980). Consequently, the elementsx of Theft by Deception were plainly established on the face of the record. With regard to the charge of Theft by Failure to Make Required Disposition of Funds, 18 P.S. §3927, the Defendant bases his argument for reversal upon a reassertion that the Commonwealth did not prove that Bradfield actually received the cash from Susan Reinert. For the reason cited previously regarding

the charge of Theft by Deception, the argument of the Defendant on this issue must also fail.

IV

The Defendant's next assignment of error asserts that the Trial Court erred in admitting into evidence Exhibits C-1 through C-9, and permitting the Assistant District Attorney to tell the jury his interpretation of various notations made on these exhibits in his closing argument.

These exhibits consisted of a bank savings account running balance card prepared by Susan Reinert, four savings account deposit slips, a telephone transfer receipt prepared by Continental Bank, two American Bank checks made out to Susan Reinert totalling $15,000.00 and a bank statement of the Estate account of Susan Reinert's deceased mother.

Exhibit C-6 through C-9, were items found in Susan Reinert's home immediately following her death and were properly authenticated. Furthermore, there was no specific objection to the admission of C-9 into evidence by the Defendant.

The remaining items, Exhibit C-1 through C-5, were also found amoung Susan Reinert's personal effects following her death and were proved to have been written by her. These facts having been established, the Trial Court properly admitted these documents as being probative of Susan Reinert's present intent to perform a future act, that is, her state of mind regarding the unusual cash transaction completed by her and her transfer of these funds to Bradfield. For example, on Exhibit C-1, Susan Reinert wrote amoung her withdrawal deposit notation therein, either "B cash INV" or "checking INV" or "cash INV", next to a series of withdrawals. The only withdrawals that the notations appeared next to are the withdrawals described in page I of the Opinion, totalling exactly $25,000.00. Furthermore, Exhibit C-2 through C-5 , contain again Susan Reinert's own handwritting the following notations: "Cash to Bill", "Cash to B", or "Cash". These withdrawal slips again correspond to the cash withdrawals totalling the $25,000.000 in question and thus, of

course, also correspond to the notations made by Susan Reinert herself on Exhibti C-1. Thus the exhibits were internally consistent. Since these items were probative of Susan Reinert's state of mind with regard to the transaction in question, these items were properly admitted and the Commonwealth could therefore argue a most logical interpretation of these notations, that "INV" meant investment and that "Cash to Bill" and "Cash to B" meant cash to Bill Bradfield.

The issue of the admissibility of evidence showing the state of mind of the declarant as proof that the declarant late in fact, carried out that intention is well settled. As Professor McCormick stated in §295 on McCormick on Evidence, "It is now clear that out of Court statements tend to prove a plan, design, or intention of the declarant are admissible, subject to the usual limitations as to remoteness in time and apparent sincerity common to all declarations of mental state, to prove that the plan, design, or intention of the declarant was

carried out by the declarant." Commonwealth v. Riggins, 478 Pa. 222, 386 A.2d 520, 526 (1978).

The only limitation upon the introduction of evidence pertaining to Susan Reinert's state of mind would involve the relevancy of her mental state and the remoteness in time of the statements. Remoteness is not an issue when it is clear that these statements are made during the same period of time that she is making her withdrawals and in a condensed period of time spanning from fall of '78 to the spring '79. Furthermore, the evidence offered fulfilled the legal standard for relevance in that it, "tended to establish some fact material to the case or tended to make the fact or issue more or less probable." Commonwealth v. Davenport, 462 Pa. 543, 324 A.2d 67 (1975).

These papers were among the several strands of the total circumstantial web created by the Commonwealth. The fact that a piece of evidence standing alone maybe insufficient to convict quite clearly does not preclude its admissions as part of

the web. Therefore, the evidence in question was properly admitted for the consideration of the jury.

As part of this same argument, the defense counsel also asserts that the Trial Court erred in permitting the prosecutor to refer in his closing statements to these nine pieces of evidence and the draw reasonable inferences therefrom. In as much as these exhibits were relevant and therefore properly admitted, the prosecutor properly utilized them in his closing. The prosecutor may refer toa all the facts and exhibits in evidence and all reasonable inferences drawn therefrom in its closing argument. Commonwealth v. Boone, 286 Pa. Super. 384, 428 A.2d 1382 (1981). The evidence established that Susan Reinert intended to make an investment with William Bradfield and these personal notations, such as "INV" and "Cash to Bill" supported the reasonable inferences that the Commonwealth made. Defense Counsel was free, of course, to argue that Susan Reinert meant something different than investment and William Bradfield when she made these notations.

V

The next assignment of error alleges that the Trial Court erred in permitting the testimony of William Patrick Gallagher, the brother of Susan Reinert, Patricia Schnure, a friend of Susan's and James McMullen, an employee of the Continental Bank, with regard to conversations which they had with Susan Reinert regarding her intention to make an investment with William Bradfield.

Initially, it must be noted that defense counsel objected on these grounds only to the testimony of Gallagher and consequently any complaint regarding the testimony of Schnure or McMullen has been waived. Commonwealth v. Griffin, 271 Pa. Super. 228, 412 A.2d 897 (1979), Commonwealth v. Clair, 458 Pa. 418, 326 A.2d 272 (1974).

The three witnesses in question all testified as to conversations that they had with Susan Reinert regarding here proposed investment with the Defendant. The testimony of these witnesses was

offered to establish Susan Reinert's state of mind. As noted previously, the existence of Susan Reinert's intent to invest with Bradfield was, in of itself, a fact that was plainly admissible to establish that Reinert acted soon thereafter in accordance with her stated intent. The state of Susan Reinert's mind was relevant with regard to an ultimate issue in this case, that is, whether she did in fact give William Bradfield money to invest on her behalf. Consequently, since the testimony was relevant to a question in issue and fell within the state of mind exception to the hearsay rule, the Trial Court properly allowed the testimony into evidence. Commonwealth v. Wright, 455 Pa. 480, 317 A.2d 271 (1974).

VI

In his Omnibus Motion, Defendant requested a change of venue due to the extensive, prejudicial pre-trial publicity.

The decision to grant or refuse a Motion for change of Venue is within the sound discretion of the trial Court, and such a determination will not be reversed absent and abuse of discretion. Commonwealth v. Stoltzfus, 462 Pa. 43, 337 A.2d 87 (1975). One who claims that he had been denied a fair trial because of prejudicial pre-trial publicity must generally show that he has been actually prejudiced in the impanelling of the jury. Commonwealth v. Hoss, 469 Pa. 195, 364 A.2d 1335 (1976).

The Defendant says he need not demonstrate actual jury prejudice in order to be entitled to a change of venue since, in this instance, the pre-trial publicity was so pervasive and inflammatory as to be inherently prejudicial. This exception to the general rule was recognized by our Supreme Court in Commonwealth v. Frazier, 471 Pa. 121, 369 A.2d 1224 (1977). However, under this exception, Defendant must show the presence of exceptional circumstances. The mere existence of pre-trial

publicity does not establish any presumption of prejudice.

Our review of the record established that the pre-trial publicity did not reveal the existence of any prior criminal record of the accused, did not refer to any confessions, admissions or reenactment of the crime by the Defendant and the publicity did not result from reports to the press by the police of Office of the District Attorney. Therefore, using the guidelines provided by the Commonwealth v. Casper, 481 Pa. 143, 392 A.2d 287 (1978), the only remaining issue is to examine whether the pre-trial publicity consisted of sensational, inflammatory, and slanted articles demanding conviction. The articles established of record by the defense counsel cannot be seen to meet this criteria.

In our review of the publicity we note that much of it took place over two years before trial, the majority was factual, not inflammatory, government officials did not act improperly as source of the publicity, the Defendant in question had no

particular notariety prior to his arrest and Delaware County is not a rural County where all eyes and attention can be said to be focused upon a single case.

Of even greater significance to our determination is the fact that defense counsel specifically requested that the jury not be sequestered during trial. This proves that any interest in this trial had dimished from its previous height.

In addition, our review of the voir dire proceedings indicates that although a number of the members of the jury panel had heard something about the case, only three potential jurors had formed an opinion regarding the guilt or innocence of the Defendant and all these individuals were stricken for cause. Therefore, we conclude following our review of the record that the Defendant has not met his burden of proof regarding his Motion for Change of Venue.

VII

Defendant next asserts that the opening statement of the Assistant District Attorney implicated the Defendant "for murder of Susan Reinert", and thta his mistrial Motion was improperly denied. This assertion is apparently based upon the fact that the prosecutor recounted the statement of the Defendant following the death of Susan Reinert that he was aware that she had died. The Assistant District Attorney after reviewing the evidence that he would present regarding the safe deposit box in West Chester said to the jury that Bradfield, upon receipt of a telephone call when he was in New Mexico, in response to the statement that Susan Reinert has been found dead said, "I already know about it, I heard about it. Somebody else called me, some other teacher from school called me about it." Bradfield then said to the person calling, "What I want you to do is take $300.00 of the money from the safe deposit box and put it back in so it

won't look suspicious."

Counsel for the Defendant says that the net affect of this part of the opening was to accuse the Defendant of pre-knowledge of the murder of Susan Reinert and thus implicate him in that crime.

There is an important distinction between what the opening statement actually said and what it did not say. The statement recounted exactly what the Defendant himself said on two earlier dates, that is, that he did not wish to possess the money in case something happened to Susan Reinert, and that someone else had called him prior to Wendy Zeigler to tell him that Susan Reinert died.

The argument of the Defendant does not suggest that the Assistant District Attorney misstated the evidence and furthermore the Assistant District Attorney did not state nor did the evidence show that Susan Reinert had met a death which was in any way the result of foul play. Our review of the record indicates that there was nothing said or any evidence produced to show that Susan Reinert had died an

unnatural death. Thus, Defendant cannot now claim that the statements of the Assistant District Attorney imputed him to another crime since no other crime was ever shown.

The Defendant cannot now complain of the inferences that reasonable men may draw from his conduct of laundering huge amounts of cash involving six other people in this scheme to hide traces of the money. He even attempted to deceive his attorney as to the source of funds for his fee.

The assertion of the Defendant that his statements and actions in performing these deeds cannot now be used against him for the theft of these monies defies logic and legal reasoning. The fact of the death of Susan Reinert could not be avoided and the statements made by Bradfield on the occasion of Reinert's death were highly probative to the issue before the Court, that is, the intent of a Defendant to defraud Susan Reinert of her money and to utilize it as his own. In the context of these facts, the jury could draw only this inference.

Even where the statement of the Defendant clearly establishes his own prior criminal conduct, such statements are fully admissible, if his state of mind is an issue, or to present the natural development of the fact. Commonwealth v. Geiger, 455 Pa. 420, 316 A.2d 881 (1974); Commonwealth v. Brown, 462 Pa. 578, 342 A.2d 84 (1975). Furthermore, and of controlling significance, defense counsel requested and received prompt and effective curative instructions. Such instructions were unnecessary as no prior crime was established. They nonetheless cleared this situation of any possible taint. Furthermore, defense counsel appeared to be satisfied with the instruction of the Court and requested no further instruction. Therefore, the Trial Court properly refused the Mistrial Motion.

VIII

Defendant next asserts that the closing argument of the Assistant District Attorney was improper in that the prosecutor argued from facts not in evidence

and that he somehow referred to the failure of the Defendant to testify.

Specifically, the Defendant directs our attention to the following statements made by Assistant District Attorney in his closing argument:

> "No one brought a sailboat into the room. So apparently he didn't go buy a sail boat. We know that, we didn't even see a picture of it and by the way, nobody testified in Court that the money . . . the trunk money, safe deposit box money, the money he had Wendy Zeigler take out of the box and then put back in, nobody testified in Court that that was his sail boat fund, whatsoever. Nobody testified to that. The Defendant has no burden to prove anything in this case. The Judge will tell you that. It's absolutely true it doesn't have to prove anything. However, when he does present witnesses and cross examine witnesses . . .
>
> But nobody said that that money, the money from the safe deposit box, was that sail boat fund, be it if there was a sail boat fund. Nobody tried to connect that money to that sail boat . . . no one said that's the money. No one even said the money that the mother had given him in 1974 was the same money . . . but $10,000.00 back in '74 nobody said nobody

even attempted to connect those monies to the two of them. And nobody ever said the Defendant had any sums of cash prior to the period we are talking about in 1979, early '79."

Our review of this portion of the closing statement clearly indicates that the Assistant District Attorney did not improperly ask the jury to make an adverse inference to the refusal of the Defendant to testify. We believe the prosecutor is entitled to make a fair reply in its summation to the defense evidence and argument, Commonwealth v. Green, 488 Pa. 611, 413 A.2d 651 (1980); and the Commonwealth is permitted to call the attention of the jury to the fact that the defense failed to call available witnesses to provide testimony relevant to the items in issue. Commonwealth v. Johnson, 457 Pa. 554, 327 A.2d 632 (1974).

Reversible error is created only where the comment of the Assistant District Attorney unequivocally calls attention to the failure of the

Defendant to testify. We believe that such did not happen here. The comment was a fair reply to the contention of the defense that the evidence established Bradfield as an independently wealthy man possessed of an innocent "sail boat fund."

The Defendant further objects to the statement of the Assistant District Attorney to the effect that the Defendant had "embezzled" money from Susan Reinert. The Defendant somehow ignores the historical development of the crimes with which he is charged and fails to recognize that the crime of embezzlement was a forerunner to the crimes of Theft by Deception and Theft by Failure to Make Required Disposition of Funds Received. Thus under the present Crimes Code, embezzlement does not refer to a specific crime but has now passed into the language as a general term of everyday usage.

We therefore conclude that the closing argument of the prosecution and its reference to facts of record and reasonable inferences drawn therefrom and its use of the term "embezzle" is a proper

characterization of the evidence produced by the Commonwealth. There can be no prejudice shown by the Defendant when the remark is supported by factual evidence and there is no indication that this characterization was an emotional characterization of the kind prohibited by our Appellate Courts Commonwealth v. Ferghuson, 270 Pa. Super. 184, 411 A.2d 241 (1979) and cases cited therein.

IX

Defendant asserts that the comments of the Assistant District Attorney in regard to the notations on the back of Exhibit C-6 were improper because the evidence was never placed into evidence. The notation in question read, "$25,000.00 minus $10,000.00 = $15,000.00 to go." In the course of his opening statement the Assistant District Attorney briefly referred to this notation. A review of the record reveals that this notation was blocked off when the exhibit was introduced into evidence and there was no testimony as to the notation at trial. The record also establishes that these notations and the comment thereon, in the opening remarks, were a

minute portion of the overwhelming circumstantial evidence of the guilt of the Defendant presented by the Commonwealth. It is our opinion that the prosecutor's comment regarding these notations in his opening statement was made in good faith. Commonwealth v. Farquhanson, 467 Pa. 50, 354 A.2d 545 (1976).

The opening address is improper only when the Assistant District Attorney makes reference to evidence which he knows will not be available. To warrant judicial relief, language must be such that its unavoidable effect is to so prejudice the jury against the Defendant as to prevent the finding of a true verdict.

There is nothing in the record that even remotelyh establishes a lack of good faith and there is no allegation by the Defendant in the brief or during oral argument that bad faith was present. Furthermore, there was no objection at trial by the Defendant as to the failure of the Commonwealth to establish this bit of evidence. Thus the issue is deemed waived. Commonwealth v. Clair, supra.

X

The Defendant next asserts that the Court erred in permitting Steven Etter to testify regarding the financial transaction of Susan Reinert and of the Defendant. Commonwealth called Steven Etter, an accountant, to testify as an expert witness concerning his analysis of the financial and banking transaction. The Defendant makes the dual argument that the testimony of Etter was hearsay and that the banking transaction were matters of such common knowledge that expert testimony is inadmissible.

Etter testified as to transactions based upon testimony and exhibits which had been properly admitted. This is not hearsay and the testimony of Etter cannot be said to be such since he was not recounting statements which has been previously made outside the Courtroom.

The argument that Etter's testimony does not come within the realm of expert opinion is without substance. Even if the area of inquiry is one about

which the trier of fact may have general knowledge, but where the expert testimony would still aid their understanding of the issues, then expert testimony is permissible. McCormick on Evidence, §14 at 30. Expert testimony has been permitted in reference to bank transactions and in reference to business dealings. Junk v. Eastend Fire Department, 262 Pa. Super. 473, 396 A.2d 1269 (1978). Expert testimony need not always take the form of an opinion rather it may as in the case at bar also be in the form of an explanation where the objects are facts are such that expert analysis will be helpful to the fact finder. Commonwealth v. Leslie, 424 Pa. 331, 227 A.2d 900 (1967).

XI

In his last assignment of error, Defendant states that the Trial Court erred in its charge to the jury in utilizing the standard jury instruction on the charge of Theft by Failure to Make Required Disposition of Funds Received. Specifically, contends that the use of standard instruction,

"confused" the jury because that instruction states that the crime in question may be proved "notwithstanding that it might be impossible to identify particular property as belonging to the victim at the time of the failure of the actor to make the required payment or disposition." This instruction was taken verbatim from the statute at issue, 18 P.S. §3927. The Defendant cites no cases holding that the Court may not quote the Crimes Code in issue nor does the Defendant explain how he was harmed by the trial Court's use of the approved standard instruction.

We find that the charge accurately stated the applicable law for the jury and made clear to them that if the Defendant or others may have mixed some of their own monies with the cash received for investment from Reinert that such mixture was of nc moment since the Commonwealth need not identify certain particular monies as being the victims.

For all these reasons, we dismissed the Post-trial Motion and sentenced the Defendant in

ccordance with law. No challenge was made to the ropriety of the sentence.

BY THE COURT:

_____

Robert A. Wright, Judge

EXHIBIT "B"

7020/1984

CONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
LIAM S. BRADFIELD, JR.,	:	
Appellant	:	No. 00055 PHL 83

JUDGMENT

On Consideration Whereof, it is now here ordered and adjudged by this Cou
her the judgment of the Court of Common Pleas of DELAWARE Coun
y, and the same is hereby AFFIRMED.

By the Court:

J. Daniel Henry
Prothonotary

Dated: January 9, 1985

J. 37020/1984

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
v.	:	PENNSYLVANIA
WILLIAM S. BRADFIELD, JR.,	:	No. 00055 PHL 83
Appellant	:	

Appeal from the Judgment of Sentence of December 22, 1982 in the Court of Common Pleas of Delaware County, Criminal Division, at No. 922 A,B,C of 1981.

Before: DEL SOLE, MONTEMURO, and HOFFMAN, JJ.

PER CURIAM:

Affirmed.

FILED: Jan 9, 1985

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
v.	:	PENNSYLVANIA
WILLIAM S. BRADFIELD, JR., Appellant	:	No. 00055 PHL 83

Appeal from the Judgment of Sentence of December 22, 1982 in the Court of Common Pleas of Delaware County, Criminal Division, at No. 922 A,B,C of 1981.

Before: DEL SOLE, MONTEMURO, and HOFFMAN, JJ.

MEMORANDUM:

This is an appeal from the judgment of sentenc for theft by deception and theft by failure to make required disposition of funds. Appellant contends that (1) the evidence was insufficient to sustain the guilty verdict; (2) the lower court was without jurisdiction to try him on the charge of theft by deception; (3) the lower court erred in failing to grant his motion for a change of venue; (4) the trial court erred in failing to grant his motion for a mistrial after the prosecutor improperly commented in his opening statement on another crime and on notations on the back of Exhibit C-6; (5) the

trial court erred in admitting into evidence Exhibits C-1 through C-9 and in permitting the prosecutor to interpret notations on these exhibit to the jury; (6) the trial court errred in permitting W. Patrick Gallagher, Patricia Schnure and James McMullin to testify regarding their conversations with Susan Reinert; (7) the trial court erred in permitting Steven Etter to testify regarding financial transactions between Susan Reinert and appellant; and (8) the prosecutor improperly commented in his closing argument on appellant's failure to testify and to produce certain evidence. After a careful review of the record, we find that the lower court's opinion has adequately disposed of appellant's arguments and we therefore affirm. [*]

Affirmed.

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[*] We note that appellant failed to attach a copy of the lower court's opinion to his brief

as required by Pa. R.A.P. 2111. Although we strongly disapprove of such noncompliance with the Pennsylvania Rules of Appellate Procedure, we have chosen to address the mertis of the appeal in the interests of judicial economy. See Pa. R.A.P. 2101 (appeal may be quashed or dismissed if defects in the appellate brief are substantial)

EXHIBIT "C"

7020/84

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 55 Philadelphia 1983

MONWEALTH OF PENNSYLVANIA

C.P. - Criminal, Delaware
(No. 922 A. 3. C of 81)

v.

LIAM S. BRADFIELD, JR.,

Appellant

O R D E R

AND NOW, March 13th, 1985, appellant's application for reargument is denied.

Per Curiam
PER CURIAM

Supreme Court of Pennsylvania

...OHRAN, Esq.
...TARY
...E
...OTHONOTARY

Eastern District

468 CITY HALL
PHILADELPHIA, PA 1910
(215) 686-4600

October 3, 1985

...Paul Curran, Esq.
...0 John F. Kennedy Blvd.
...iladelphia, Pennsylvania 19103

Re: Commonwealth of Pa. v. William S. Bradfield, Jr., Petitioner
No. 422 E.D. Allocatur Docket 1985

...r Mr. Curran:

This is to advise you that the following Order has been ...tered on your Petition for Allowance of Appeal, filed in the ...ve captioned matter:

"September 30, 1985.

Petition denied.

Per Curiam."

Very truly yours,

PATRICK TASSOS
Deputy Prothonotary

...w

...: John Reilly, Esq.

CURRAN, MYLOTTE, DAVID & FITZPATRICK
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ATTORNEY FOR: APPELLANT

COMMONWEALTH OF PENNSYLVANIA

vs.

WILLIAM S. BRADFIELD, JR.,
Appellant

IN THE SUPREME COURT
OF PENNSYLVANIA

No. 55 Philadelphia 1983

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

TO THE PROTHONOTARY OF THE PENNSYLVANIA SUPREME COURT:

Defendant, WILLIAM S. BRADFIELD, JR., by his attorney, JOHN PAUL CURRAN, ESQUIRE, gives notice to this Honorable Court that an Appeal is hereby taken to the Supreme Court of the United States from the Order entered in this matter on September 30, 1985 by this Court. This Appeal is taken by Writ of Certiorari, pursuant to 28 U.S.C. §1257 (3).

Respectfully submitted,

By: _____
JOHN PAUL CURRAN, ESQUIRE
Attorney for Appellant

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COMMONWEALTH OF PENNSYLVANIA

vs.

WILLIAM S. BRADFIELD, JR.,
Appellant

IN THE SUPREME COURT
OF PENNSYLVANIA

No. 55 Philadelphia 1983

PROOF OF SERVICE

JOHN PAUL CURRAN, ESQUIRE, Attorney for Appellant, WILLIAM S. BRADFIELD, JR., hereby certifies that he did mail a true and correct copy of the Notice of Appeal in the above-captioned matter by regular mail on December 27, 1985 to John Reilly, Esquire, District Attorney of Delaware County Courthouse, Media, PA 19063.

CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: _____
JOHN PAUL CURRAN, ESQUIRE
Attorney for Appellant

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ATTORNEY FOR: APPELLAN

COMMONWEALTH OF PENNSYLVANIA

vs.

WILLIAM S. BRADFIELD, JR.,

Appellant

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 55 Philadelphia 1983

NOTICE OF APPEAL TO THE SUPERIOR COURT OF THE UNITED STATES

TO THE PROTHONOTARY OF THE PENNSYLVANIA SUPERIOR COURT:

Defendant, WILLIAM S. BRADFIELD, Jr., by his attorney, JOHN PAUL CURRAN, ESQUIRE, gives notice to this Honorable Court that an Appeal is hereby taken to the Supreme Court of the United States from the Order entered in this matter on September 30, 1985 by this Court. This Appeal is taken by Writ of Certiorari, pursuant to 28 U.S.C. §1257 (3).

Respectfully submitted,
CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: _____
JOHN PAUL CURRAN, ESQUIRE
Attorney for Appellant

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ATTORNEY FOR: APPELLA.

COMMONWEALTH OF PENNSYLVANIA	IN THE SUPERIOR COURT OF PENNSYLVANIA
vs.	
WILLIAM S. BRADFIELD, JR.,	No. 55 Philadelphia 1983
Appellant	

PROOF OF SERVICE

JOHN PAUL CURRAN, ESQUIRE, Attorney for Appellant, William S. Bradfield, Jr., hereby certifies that he did mail a true and correct copy of the Notice of Appeal in the above-captioned matter by regular mail on March 12, 1986 to John Reilly, Esquire, District Attorney of Delaware County Courthouse, Media, PA 19063.

CURRAN, MYLOTTE, DAVID & FITZPATRICK

By: John Paul Curran Esq
JOHN PAUL CURRAN, ESQUIRE
Attorney for Appellant